



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Suzanne Lee Chan, Vice Mayor
Anu Natarajan
Bill Harrison
Dominic Dutra

City Staff

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Harvey E. Levine, City Attorney
Mark Danaj, Assistant City Manager

Dawn G. Abrahamson, City Clerk
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Annabell Holland, Community Services Director
Norm Hughes, City Engineer
Bruce Martin, Fire Chief
Jim Pierson, Public Works Director
Jeff Schwob, Interim Community Dev. Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Brian Stott, Human Resources Director
Lori Taylor, Economic Development Director
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Agenda and Report • Fremont City Council Meeting • June 21, 2011



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Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION
CITY OF FREMONT**

DATE: Tuesday, June 21, 2011

TIME: 4:00 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont-

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT:

Any person desiring to speak on an item listed on this Notice, may do so now. The Mayor will limit the length of your presentation and each speaker may only speak once on each item.

- 1) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director; Designated Representative, Bill Avery; Joan Borger, Assistant City Attorney and Art Hartinger, Special Counsel as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Association of Management Employees
Fremont Association of City Employees
Operating Engineers
Teamsters Local 856
Fremont Police Association
Professional Engineers and Technicians Association

- 2) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City

Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director; Designated Representative, Bill Avery; Joan Borger, Assistant City Attorney and Art Hartinger, Special Counsel as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Fire Fighters
Fremont Fire Fighters Battalion Chiefs

This Special Meeting is being called by Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
JUNE 21, 2011
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Regular Meeting and Work Sessions of January 12, 2010 and January 19, 2010, the Regular Meeting of January 11, 2011, the Special Meeting of January 17, 2011, for the Special Work Session and Joint Regular Meeting of January 18, 2011, the Regular Meetings of January 25, 2011, March 1, 2011, the Special and Regular Meetings of March 15, 2011, the Regular Meeting and Work Session of April 19, 2011 and the Special and Regular Meetings of April 26, 2011*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Located at 225-293 Driscoll Road from Single Family Residence District (R-1-10) to Planned District P-2010-280*

RECOMMENDATION: Adopt ordinance.

- 2.4 *Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for the Pacific Commons Planned District P-2000-214 Governing the Property Generally Located West of the Interstate I-880, South of Auto Mall Parkway, North of Curie Street and East of the Fremont Auto Mall*

RECOMMENDATION: Adopt ordinance.

2.5 **CEDAR STREET SIDEWALK IMPROVEMENT CONTRACT AWARD**
Approval of Plans and Specifications and Award of Contract to the Lowest Responsible Bidder for the Cedar Street Sidewalk Improvement Project No. 8708 (PWC)

Contact Person:

<i>Name:</i>	<i>Craig Covert</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4785</i>	<i>510-474-4748</i>
<i>E-Mail:</i>	<i>cchovert@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATIONS:

1. *Approve the plans and specifications for Cedar Street Sidewalk Improvement Project No. 8708 (PWC).*
2. *Accept the bid and award the construction contract for the Cedar Street Sidewalk Improvement Project No. 8708 (PWC) to the lowest responsive and responsible bidder, JJR Construction, Inc., in the amount of \$149,454.00 and authorize the City Manager to execute the contract.*

3. CEREMONIAL ITEMS

- 3.1 Presentation of the California Association of Local Economic Development (CALED) Award of Excellence—grand prize winner—to the City of Fremont acknowledging the innovative Local Business Stimulus Package

4. PUBLIC COMMUNICATIONS

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – The Public Financing Authority Board has been cancelled. [See separate notice](#) (lilac paper).

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS – None.

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 IRVINGTON BART STATION AGREEMENT

Authorization to Enter into a \$120 Million Agreement with BART to Design and Construct the Irvington BART Station

Contact Person:

Name: Jim Pierson
Title: Director
Dept.: Public Works
Phone: 510-494-4722
E-Mail: jpierson@fremont.gov

RECOMMENDATION: Staff recommends that the City Council adopt a resolution:

1. Approving actions and making required statutory findings in connection with funding by the Redevelopment Agency of the City of Fremont and execution of a funding agreement with the Agency and BART for development of the Irvington BART Station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area; and
2. Authorizing the City Manager or his designee to execute a Comprehensive Agreement with the San Francisco Bay Area Rapid Transit District for the design and construction of the Irvington BART Station as described herein.

Staff further recommends the Council authorize the City Manager or his designee to approve amendments to the Comprehensive Agreement, if required, provided the amendments do not have a negative fiscal impact upon the City.

7.2 PURCHASING ORDINANCE REVISION

Introduction of an Ordinance Amending Title 2, Chapter 9 of the Fremont Municipal Code, "Purchasing Code"

Contact Person:

Name:	Corina Campbell	Harriet Commons
Title:	Purchasing Manager	Director
Dept.:	Finance	Finance
Phone:	510-494-4622	510-284-4010
E-Mail:	ccampbell@fremont.gov	hcommons@fremont.gov

RECOMMENDATION: Waive reading of the full text of the ordinance, and introduce the amendment to the ordinance Title 2, Chapter 9 of the Fremont Municipal Code, "Purchasing Code".

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

JUNE 21, 2011

***2.3 Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Located at 225-293 Driscoll Road from Single Family Residence District (R-1-10) to Planned District P-2010-280**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.4 Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for the Pacific Commons Planned District P-2000-214 Governing the Property Generally Located West of the Interstate I-880, South of Auto Mall Parkway, North of Curie Street and East of the Fremont Auto Mall**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.5 CEDAR STREET SIDEWALK IMPROVEMENT CONTRACT AWARD**
Approval of Plans and Specifications and Award of Contract to the Lowest Responsible Bidder for the Cedar Street Sidewalk Improvement Project No. 8708 (PWC)

Contact Person:

Name:	Craig Covert	Norm Hughes
Title:	Associate Civil Engineer	City Engineer
Dept.:	Public Works	Public Works
Phone:	510-494-4785	510-474-4748
E-Mail:	ccovert@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to recommend that City Council approve the plans and specifications for the Cedar Street Sidewalk Improvement Project No. 8708 (PWC), accept the bid and award the contract for construction to JJR Construction, Inc., in the amount of \$149,454.00.

BACKGROUND: In June 2008, City Council approved the Cedar Street Sidewalk Improvement Project as part of the Capital Improvement Program and allocated \$215,000 of Measure B Bike and Pedestrian Funds to the project. This project will construct curbs, gutters and sidewalks along the unimproved portion of Cedar Street between Ellsworth Street and Bryant Street to increase pedestrian access and safety to the nearby Mission San Jose Elementary School.

DISCUSSION: The Historical Architectural Review Board (HARB) reviewed the proposed street improvement plans on April 7, 2011, and requested that staff incorporate the following elements in the design:

- a) Removing the sidewalk planters from both sides of the street and placing the sidewalks directly behind the curb, thereby constructing contiguous sidewalks as opposed to separated sidewalks;
- b) Using “Mission Tan” concrete coloring in the sidewalks to match the sidewalks that were installed along the historic segment of Mission Boulevard between Washington Boulevard and Pine Street;
- c) Incorporating a chronology into the sidewalks using special concrete stamping. This stamped chronology or “timeline” would identify significant events and dates in the history of the development of the Mission San Jose neighborhood

Staff considered these recommendations and modified the sidewalk design to include contiguous sidewalks and use the “Mission Tan” concrete coloring. In the interest of adhering to the scheduled completion date of the project this year by mid-August (before school resumes), however, staff concluded there was insufficient time (and funds) to design, process to approval, and construct a timeline in the sidewalk concrete. The final design that will be constructed will have sidewalks contiguous to the curbs and will have the “Mission Tan” pavement coloring, in accordance with the HARB recommendations.

Bid Results: Bids were received on June 1, 2011 for the Cedar Street Sidewalk Improvement Project No. 8708 (PWC). Bids were received, as follows:

<u>BIDDER</u>	<u>TOTAL BID</u>
JJR Construction, Inc.	\$149,454.00
Wattis Construction Company, Inc.	\$155,767.00
Galeridge Construction, Inc.	\$162,615.55
W.R. Forde Associates	\$163,651.00
Nor-Cal Concrete, Inc.	\$170,648.50
Sposeto Engineering, Inc.	\$173,317.50
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Engineer's Estimate	\$ 170,000.00

The low monetary bidder, JJR Construction, Inc., is experienced in this type of project, is a responsible contractor and submitted a responsive bid.

PROJECT COSTS: The following is a summary of total estimated costs for construction:

Staff – Survey	\$	2,000
Staff – Environmental Approval	\$	5,000
Staff – Design Administration	\$	6,000
Staff – Design	\$	45,000
Construction Cost	\$	149,454
(Includes \$20,000 in contingency)		
Staff - Construction Mgt. & Inspection	\$	25,000
Pothole and Materials Testing Consultants	\$	10,000
Total Estimated Construction Costs	\$	242,454

FUNDING: Funding available for the project is as follows:

Fund 509 ACTIA Measure B (Bike & Ped Funds)	\$	215,000
Total Estimated Available Funding	\$	215,000

Although the current project estimate shows there is a \$27,454 funding shortfall, the 2011/12-2015/16 Capital Improvement Program (CIP), which was approved by City Council on June 14, 2011 appropriates an additional \$40,000 to this project to provide for the staff time needed for the construction phase. Therefore, there are sufficient funds available to award the construction contract.

FISCAL IMPACT: This project will be funded through \$215,000 of Measure B Bicycle and Pedestrian Funds previously appropriated to the project and another \$40,000 to be appropriated July 1 through the approval of the 2011/12-2015/16 CIP. The cost to maintain these improvements will be provided in future operating budgets.

ENVIRONMENTAL: This project is categorically exempt under Section 15301 (c) of the Guidelines for the California Environmental Quality Act. Staff has filed the notice with the Alameda County Recorder's Office.

ENCLOSURE: None

RECOMMENDATIONS:

1. Approve the plans and specifications for Cedar Street Sidewalk Improvement Project No. 8708 (PWC).
2. Accept the bid and award the construction contract for the Cedar Street Sidewalk Improvement Project No. 8708 (PWC) to the lowest responsive and responsible bidder, JJR Construction, Inc., in the amount of \$149,454.00 and authorize the City Manager to execute the contract.

6.1 Report Out from Closed Session of Any Final Action

7.1 IRVINGTON BART STATION AGREEMENT

Authorization to Enter into a \$120 Million Agreement with BART to Design and Construct the Irvington BART Station

Contact Person:

Name: Jim Pierson
Title: Director
Dept.: Public Works
Phone: 510-494-4722
E-Mail: jpierson@fremont.gov

Note: A companion item appears on tonight's agenda for the Fremont Redevelopment Agency.

Executive Summary: With the adoption of the Consolidated Amended Redevelopment Plan in 2010, funding for the Irvington BART Station Project (the "Station Project") was secured. The Redevelopment Agency of the City of Fremont (the "Agency") will provide funds in an amount of up to \$120 million (the "Agency Funding" or "Agency Funds") using net proceeds of tax allocation bonds ("Bonds"). In compliance with Redevelopment Law related to the funding and development of the Station Project, this report and accompanying documents provide the evidentiary basis upon which the City Council, acting in its policy judgment, could make certain required statutory findings to ensure that the redevelopment purposes of using tax increment revenue for Agency funding of the Station Project are met.

Agency Funding will be provided to BART through a Comprehensive Agreement for the Design and Construction of the Irvington BART Station (the "Project Agreement") among the Agency, the City and BART. Using the Agency funding, BART (in cooperation with the City) will perform the necessary land acquisition, design and construction work to complete the Station Project. As the Station Project will have significant impacts on key portions of the City's infrastructure and serve as a major economic catalyst to the Irvington Area, the Project Agreement was developed to ensure continued cooperation between BART and the City and to define the respective rights and obligations of each party in connection with the Station Project.

In order to move forward with the Station Project, staff is recommending that the City Council take the following actions:

1. Adopt a resolution approving actions and making required statutory findings in connection with funding by the Redevelopment Agency of the City of Fremont and execution of a funding agreement with the Agency and BART for development of the Irvington BART Station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area.
2. Authorize the City Manager or his designee to execute a Comprehensive Agreement with the San Francisco Bay Area Rapid Transit District (BART) for the design and construction of the Irvington BART Station as described herein; and approve future amendments to the Agreement, if required, provided the amendments do not have a negative fiscal impact upon the City.

BACKGROUND: The extension of the BART system from its southern terminus in central Fremont to the Warm Springs area of southern Fremont has been planned for over 30 years when the original BART system was being developed. For at least the past 30 years, this 5.4 mile extension was planned to include two new BART stations, one at the end of the line in Warm Springs and the other – the Irvington Station – half-way between the existing station and Warm Springs in the Irvington Area at the intersection of Washington Boulevard and Osgood Road.

In 1992, BART certified a Final Environmental Impact Report (“EIR”) for the Warm Springs Extension project (the “WSX”) that included both the Warm Springs and Irvington Stations as part of the base project. However, due to lack of funding, the project languished until a funding plan was developed in approximately 2001. Due to funding constraints, the plan only included funding for the Warm Springs Station, with the Irvington Station becoming an “optional” station, to be constructed if funding could be secured. The City assumed responsibility for identifying the funding for the Irvington Station.

Full funding for the \$890 million WSX (without the Irvington Station) was secured in 2008 and, following design, BART began construction of the subway portion of the WSX in 2009. Construction of the subway is approximately 50% complete. The selection process for the final WSX contractor is nearing completion. This contractor will complete the design and construct the remaining elements of the project. Construction on the remaining elements of the WSX is scheduled to begin later this year. The full WSX project is anticipated to be completed and in operation in mid-2015.

Although the Irvington Station is not included in the WSX construction contracts, BART has determined that if the station development work begins this summer, construction could occur concurrently with the completion of the WSX construction. The goal is to have the Irvington Station completed and operational at the same time as the WSX. However, at a minimum, it is expected that all elements of the Irvington Station that could be impacted by operating trains on the WSX will be completed prior to train operations, thus avoiding the substantial additional cost that would be required to construct the station building with trains operating on the WSX.

With the adoption of the Consolidated Amended Redevelopment Plan in 2010, funding for the Irvington Station was secured. The Redevelopment Agency of the City of Fremont (the “Agency”) will provide funding for the Irvington Station in an amount of up to \$120 million (the “Agency Funding” or “Agency Funds”) using net proceeds of tax allocation bonds to be serviced by tax increment revenue from the Fremont Merged Redevelopment Project Area, which includes the Irvington subarea in which the Irvington Station will be located. Constructing the Irvington Station as part of the development of the Warm Springs extension will make the WSX more cost effective. Staff has determined that this plan for redeveloping the Fremont Merged Redevelopment Project Area is in accordance with the California Community Redevelopment Law (the “Redevelopment Law”).

Agency Funding will be provided through a Comprehensive Agreement for the Design and Construction of the Irvington BART Station (the “Project Agreement”) among the Agency, the City and BART. Pursuant to the Project Agreement, the Agency would provide the Agency Funds to BART, BART (in cooperation with the City) would perform the necessary land acquisition, design and construction work to complete the Station Project, and the City would provide input, review and approval of various elements of the Station Project. The Project Agreement discusses roles and responsibilities, time lines, construction standards and cost reimbursement for various elements of the work.

DISCUSSION/ANALYSIS: The Station Project is the key catalyst activity to advance public and private improvement activities that will promote economic development and job growth, improvement of the physical environment, provision of affordable housing, and stimulation of private sector reinvestment. Section 33445 of the California Redevelopment Law requires that before an agency is allowed to fund public improvements, the local legislative body must make three findings. These findings are outlined below, followed by the facts in support of each finding.

The public improvements benefit the project area, in this case the Irvington Area, by helping to eliminate blight. *The Station Project will introduce new ridership to the Irvington Area and create a convenient transit center for the residential neighborhood. As a result, the Station Project will help to revitalize the historic commercial district with new retail and restaurant facilities and will conserve and enhance the residential areas. In turn, these improved economic circumstances will stimulate currently lacking private sector investment that would help to eliminate blighting factors. Taken together, the Agency funding of the Station Project, combined with the resulting private sector reinvestment and elimination of blighting conditions, will produce new job opportunities for jobless, underemployed and low income residents and will enhance the overall quality of life for residents, businesses, workers, customers and visitors to the Irvington Area.*

No other source of financing is available to the community to pay for the public improvements. *Without the Bond proceeds, the City and Agency would need to identify \$120 million of regional, state and/or federal grant funding to design and construct the station. BART has repeatedly and clearly indicated that funding for its Warm Springs Extension would not include funding for the Irvington Station and that the Irvington Station can be funded **only if** the City and the Agency can arrange the necessary funding for development of the Station. Moreover, the current unprecedented recession and the disarray of the finances of the State of California have resulted in a massive City general fund mismatch between revenues and operating service expenses, leaving absolutely no room in the City's budget, now or in the foreseeable future, for the City to fund new capital improvement activities of the magnitude of the Station Project.*

The Agency's funding of the public improvement is consistent with the Agency's Implementation Plan. *The Agency's current Five-Year Implementation Plan covers the redevelopment planning period from July 1, 2008 through June 30, 2013. In addition to other goals and policies served in the Implementation Plan, the project to develop the Irvington BART station is identified and discussed as one of the Agency's key projects, in order to assist the extension of the BART Fremont line, to strengthen Irvington as a transportation hub by providing public transportation facilities, all in support of the revitalization of the commercial and residential portions of the Project Area.*

The Section 33679 Summary Report (attached to this staff report as Enclosure 2), particularly Parts IV and V, provides more detail regarding the evidentiary support for these Redevelopment Law findings.

In addition to the findings required by Redevelopment Law, the Station Project has major significance to the achievement of regional and statewide policy goals to promote higher density infill transit-oriented development and to control and reduce the generation of greenhouse gases and other toxic air pollutants. Based on staff's findings, and in compliance with Redevelopment Law, staff recommends that the Council adopt a resolution approving actions and making required statutory findings in connection with funding by the Agency and execution of a funding agreement with the Agency and BART for

development of the Irvington BART station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area.

The Irvington Station construction will have significant impacts on key portions of the City's infrastructure, such as City streets (including curbs, gutters and sidewalks), traffic control devices, storm drains, sanitary sewers, water lines, hydrants, electroliers, landscaping, irrigation and all other public facilities and appurtenances. Hence the Project Agreement was developed to ensure continued cooperation between BART and the City and to define the respective rights and obligations of each party in connection with the Station Project.

Key elements of the Project Agreement address the following specific issues:

- In cooperation with and subject to specified review and approvals from the City and using the Agency Funds, BART will be responsible for managing and causing the land assembly for and design and construction of the Irvington Station Project.
- BART agrees to use best efforts to implement the Irvington Station Project expeditiously and in the most cost-effective manner possible and to complete the work within budget.
- BART will designate a qualified BART project manager for the Irvington Station Project who will inform and coordinate with the City regarding all aspects of the project.
- BART will utilize the services of the existing WSX General Engineering Consultant to complete preliminary engineering of the Station and will issue a separate request for proposals for the remaining engineering design work. The selected consultant team will prepare the construction contract documents and BART will advertise the construction contract for bids and award the contract to lowest responsive and responsible bidder.
- As part of the Station Project, BART will construct the necessary City street connections between the west Irvington Station parking lot and High Street to the north and Roberts Avenue to the west. These streets will be constructed to City standards and upon City acceptance will be turned over to the City to own, operate and maintain.
- BART will provide community outreach and liaison staff for the Irvington Station Project in conjunction with the ongoing WSX outreach activities.
- City Real Property staff may assist BART with some aspects of the property acquisition efforts. Any costs associated with this work will be reimbursed by BART from the Agency Funds.
- At the completion of the Station Project, the City will convey the existing mini-storage property for the west parking lot to BART for the purpose of maintaining parking for the Station.
- The Agency will use diligent good faith efforts to issue the Bonds to obtain the Agency Funds for the Irvington Station Project. If the Agency cannot issue the Bonds in a timely manner, it can terminate the Project Agreement.

- Upon issuance of the Bonds, the Agency will pay the \$120 million net proceeds of the Bonds (i.e., the Agency Funds) to BART to be held in a segregated, interest bearing account (with interest earned becoming part of the Agency Funds).
- BART may draw upon the Agency Funds monthly exclusively to pay the costs incurred for the Irvington Station Project, including reimbursement of staff and contractor costs incurred by the City to meet its review and support obligations under the Project Agreement in an amount not exceeding \$4.5 million.
- BART's monthly draws will be subject to City review and a mechanism for resolution of any disputes regarding such draws.
- Any Agency Funds remaining after payment of all costs of the Irvington Station Project will be returned to the City for use consistent with the Consolidated Amended Redevelopment Plan, the Redevelopment Law, and all other applicable legal requirements, including requirements for use of the Bond proceeds.
- If the Irvington Station Project costs exceed the Agency Funding of up to \$120 million, the parties will meet and confer to determine how best to proceed and will cooperate to secure regional and/or state funding to cover any funding shortfall.

Additionally, the City will provide a project oversight consultant (POC) who will work with the BART staff involved in the Station Project, and who will provide regular communication with the City and represent the City's interests of having a well designed and constructed, cost-effective, aesthetically pleasing station that is fully integrated into the Irvington Area. The POC will be selected by the City and all costs will be reimbursed by BART from the Agency Funds.

During the Station Project, it may be necessary, from time to time, to modify the Project Agreement to define additional aspects of the relationship between BART and the City that are not fully covered in the Project Agreement. Therefore, staff is requesting that the Council authorize the City Manager or his designee to approve future amendments to this Project Agreement, if needed, so long as the amendment does not have a negative fiscal impact upon the City.

FISCAL IMPACT: On June 7, 2011, the Council and the Agency adopted Resolution Number 2011-33 and Resolution Number 428, respectively, approving the issuance and sale of tax allocation bonds of the Redevelopment Agency of the City of Fremont to finance redevelopment activities within or for the benefit of the Agency's Fremont Merged Redevelopment Project. This action is conditioned on approval of the Project Agreement and full execution of the Project Agreement by the Agency, the City and BART. The Bonds would be issued in a principal amount sufficient to yield \$120 million of net bond proceeds to provide the Agency Funding for the Irvington Station Project.

Repayment of the Bonds would be secured by the tax increment revenue generated from the Agency's Fremont Merged Redevelopment Project Area, net of the amounts required to be deposited in the Agency's Low and Moderate Income Housing Fund and net of certain statutory payment obligations of the Agency to various affected taxing entities that receive property taxes from the Project Area (which netted amounts would not be pledged toward repayment of the Bonds).

ENVIRONMENTAL REVIEW: The Irvington BART Station was environmentally cleared as an Optional Station through BART's State Environmental Impact Report approved in 2003 in accordance with the California Environmental Quality Act ("CEQA") and its Federal Environmental Impact Statement approved in 2006. Also in accordance with CEQA, the City Council and Agency considered the environmental impacts of the Station Project and made the required findings regarding Agency funding and BART development of the Station Project as part of two recent actions: (1) the initial approval of partial advance Agency funding for the Station Project preliminary design and construction elements on November 12, 2008; and (2) approval of the Consolidated Amended Redevelopment Plan in March 2010 (for which the City and Agency prepared and certified their own EIR on March 2, 2010 to evaluate the Station Project among other redevelopment activities). No further environmental review is required as the proposed project is consistent with the previous scope of environmental review and it does not meet the thresholds requiring subsequent environmental review. The attached approval resolution provides additional detail about the manner in which the City Council and Agency have complied with CEQA in connection with the current actions.

ENCLOSURES:

- [Draft Resolution](#)
- [Section 33679 Summary Report](#)

RECOMMENDATION: Staff recommends that the City Council adopt a resolution:

1. Approving actions and making required statutory findings in connection with funding by the Redevelopment Agency of the City of Fremont and execution of a funding agreement with the Agency and BART for development of the Irvington BART Station to implement the redevelopment program for the Irvington Area portion of the Fremont Merged Project Area; and
2. Authorizing the City Manager or his designee to execute a Comprehensive Agreement with the San Francisco Bay Area Rapid Transit District for the design and construction of the Irvington BART Station as described herein.

Staff further recommends the Council authorize the City Manager or his designee to approve amendments to the Comprehensive Agreement, if required, provided the amendments do not have a negative fiscal impact upon the City.

7.2 PURCHASING ORDINANCE REVISION

Introduction of an Ordinance Amending Title 2, Chapter 9 of the Fremont Municipal Code, “Purchasing Code”

Contact Person:

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Executive Summary: The City’s purchasing ordinance last underwent a comprehensive revision in late 2002. Over time, staff has identified provisions that need to be clarified, modified or amended to more closely reflect administrative practice, reduce administrative burden, or clarify process. These changes will make the City’s contracting procedures clearer, and more flexible and efficient. The proposed changes to the existing ordinance are not intended as a comprehensive substantive revision; the basic structure and requirements for competitive procurement remain the same. City Manager authority to award and execute contracts is proposed to remain at the current dollar threshold (\$100,000). Proposed modifications will provide that the dollar threshold is measured on a per contract basis, rather than per contractor per fiscal year; clarify the City Manager’s change order or contract amendment authority; provide procedures that will allow for flexibility in procurement processes when justified; delegate authority to allow specification by brand name; define certain contracts as exempt from competitive procurement and clarify use of the sole source, piggybacking and “idle act” exceptions to competitive procurement; establish protest procedures; and require departments when requested by the Finance Director to provide reports on the contracts they procure and manage.

BACKGROUND: Staff has found over time that certain aspects of the City’s purchasing ordinance lead to cumbersome and inefficient processes. Over the past year, interdepartmental staff has worked to identify these areas and propose changes to make the procurement process more clear, flexible and efficient, while maintaining integrity and obtaining the best price available for services and goods. In particular, staff has found the following:

- The measurement of the City Manager’s authority on a per contractor per fiscal year basis is difficult to administer because the City (through its different departments) has multiple contracts with certain entities (such as the County) that are not always awarded on a fiscal year basis. It is difficult to determine at any given time how much contractual obligation has been awarded by the City in any given fiscal year, and thus difficult for staff to determine the appropriate contract award process. In addition, because there may be multiple contracts with other entities, minor contracts and amendments end up going through the Council approval process, which adds delay and staff expense to the process.
- Confusion exists about City Manager authority to execute contract renewals and certain amendments.
- The ordinance does not contain provisions for procurements that consist of services and goods together.

- The ordinance does not provide a process for staff to recommend alternative procurement methods that might be useful due to the nature of the item or service being solicited.
- There are several types of contracts that are frequently found to be exempt from competitive solicitation because the good or service can only be provided by one entity, such as utilities, or equipment or software maintenance, or because of the unique service desired. The current procedures to request an exemption from solicitation are unnecessarily cumbersome.
- The ordinance does not contain protest procedures to require bidders and proposers to promptly submit protests, and contract awards therefore may lack certainty.

DISCUSSION/ANALYSIS: The Finance Department and City Attorney's Office, along with other City departments, have identified areas where the City's purchasing ordinance can be amended to clarify, streamline, and add flexibility to contracting procedures. Changes are proposed mainly in the ordinance provisions governing signature authority, contract procurement procedures, and exemptions and exceptions to competitive procurement. Other changes are recommended to implement State law with respect to specification by brand or trade name and approval of public project plans and specifications. Protest procedures are proposed, and a provision requiring each department to report to the Finance Director on contracts it procures and manages is also suggested. The draft ordinance is attached to this report. Also attached is a document showing all the revisions in the context of the entire purchasing ordinance. The most significant proposed changes to the purchasing ordinance are described below.

Contract Authority: Staff recommends that FMC Section 2-9103, the provision measuring City Manager authority to contract on a per contractor per fiscal year basis, be modified to provide that the threshold is measured on a per contract basis. This is a clear threshold for staff to apply and will result in a more efficient process while avoiding the administrative work involved with bringing otherwise minor contracts to Council for approval.

Staff recommends several clarifying revisions to FMC Section 2-9202, which sets forth the City Manager's authority to execute contracts. These changes make clear that the City Manager may execute annual renewals of contracts of less than \$100,000 in any one year. Staff proposes that the City Manager's authority to lease or license real property be changed from a limit of one year to three years, and where it is clear the City will not use the property, change the limit from three years to seven years.

Changes are also proposed to allow the City Manager to execute agreements in any amount that is appropriated in the budget, including granting public utilities interests in City property, where needed in connection with a City facility or project. This will avoid delays in City projects. A new provision will permit the City Manager to execute "pass through" contracts (those that are entirely funded by outside private parties) without limitation. These typically apply to private development, such as contracts for EIR preparation paid for by the developer; this provision will streamline the process for applicants. Revisions to the City Manager's contract amendment or change order authority are also proposed that would make clear that the City Manager may execute change orders or amendments to a City Manager-awarded contract that take the contract up to \$100,000 and that, for City Council-approved contracts, the City Manager can execute change orders or amendments of up to 20% of the value of the contract, provided there are sufficient appropriated and unencumbered funds. This change is a clarification and not a change in existing City Manager authority.

Contract Procurement: Staff proposes to remove the requirement in FMC Section 2-9300 that contracts of \$5,000 or less for the purchase of goods be let through the minor competitive process in order to streamline the process for these small purchases. Examples of this type of purchase are goods purchased with a City-issued credit card or on blanket purchase orders, and one-time small purchases made by departments.

A new category of contract, “Price Contracts,” is proposed in FMC section 2-9303.1 to make clear that the City can enter into agreements that, once competitively bid, set the price for goods or services. Subsequent purchases under that agreement can be made without further competition. The City Manager is authorized to make purchases of any amount under a price contract so long as there are unencumbered appropriated funds available.

Revisions to FMC Section 2-9307 are proposed to allow the City Manager to decide which procurement process to use in situations where the City is attempting to contract for a combination of services and goods, or where the contract type does not fall clearly into the personal property, services or public project construction categories. A new provision, FMC Section 2-9308, is proposed to allow the City Manager to approve a procurement method not contained in the Purchasing Code when staff demonstrates the benefits to be achieved by the alternate method and the method meets the goals of the purchasing ordinance. (This provision is not available for public project construction because of State law requirements.) These provisions will provide for more flexibility and efficiency in solicitation processes.

A new section is proposed, FMC Section 2-9309, to delegate authority to the City Manager to approve specification by brand or trade name in invitations to bid and to not accept equals where permitted by State law. Delegating authority to the City Manager will streamline the process for public works projects. The language in this section is consistent with provisions in the California Public Contract Code.

Exemptions and Exceptions to Competitive Procurement: Several changes are proposed in this part of the purchasing ordinance to make the process clearer and more streamlined. FMC Section 2-9700 adds a policy statement that the exemptions/exceptions to competitive procurement should be limited in their application. Staff proposes to add FMC Section 2-9701, which sets forth a list of contract types that are exempt from competitive procurement. These are generally types of contracts that are frequently found to be exempt from competitive solicitation because the good or service can only be provided by one entity or because of the unique service desired. The list also includes contracts that are wholly funded by private parties and contracts for goods and services of \$5,000 or less. This list will eliminate the review process and will save staff resources.

Revisions are proposed to the “specialty” item and “other public agency” exceptions to competitive procurement in FMC Section 2-9703 and 2-9704. The “specialty item” exception is retitled to “sole source” and includes wording to make it clear that services may also be a “sole source” item. Revisions to the “public agency” exception include adding wording to distinguish between cooperative purchases, where the City participates with other agencies, and purchases where the City uses another agency’s contract terms. In addition, wording is added to allow the City to contract with another agency to construct public projects. Revisions are proposed to the “sole source” and “public agency” exceptions to

make the procedures that departments must follow to justify exception more streamlined. Approval of the Purchasing Manager and City Manager is required.

An additional category of exception to competitive procurement is suggested in Section 2-9705 for contracts where competitive procurement is not useful or advantageous. This reflects a well-known exception to competitive procurement created by the courts. The exception applies where it is shown that solicitation of bids or proposals is not useful or does not produce an advantage to the City. Use of the exception must be justified and approved by the Purchasing Manager and City Manager.

Protest Procedures: A new section 2-9800 is proposed to add protest procedures. This section will establish protest procedures for certain contracts. The purpose of the new section is to require bidders and proposers to submit complete protests in a timely way and to give the City more certainty in the award of contracts. If a protest is not timely submitted, then the protest may be rejected and the protestor may not pursue the protest in court. This section is based on California judicial decisions that affirm the use of protest procedures and require the protestor to exhaust this remedy before going to court. The City Manager will hear protests for contracts within his/her award authority and the City Council will hear protests for contracts within its award authority.

General procedures: A new section, FMC 2-9900, is proposed to require departments, when requested by the Finance Director, to prepare and submit reports regarding contracts procured and managed by the department. Because this part of the procurement process is decentralized, this will promote transparency and accountability in City contracting.

FISCAL IMPACT: These revisions to the purchasing ordinance do not have any direct fiscal impact. However, the proposed changes will enable staff to work more efficiently with diminished resources by using alternative methods while still ensuring the best value for the City.

ENVIRONMENTAL REVIEW: This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(B)(S) in that it is not a project which has the potential for causing a significant effect of the environment.

ENCLOSURE:

- [Draft ordinance & Purchasing code with proposed changes incorporated](#)

RECOMMENDATION: Waive reading of the full text of the ordinance, and introduce the amendment to the ordinance Title 2, Chapter 9 of the Fremont Municipal Code, "Purchasing Code".

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
June 28, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 5, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 12, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 19, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 26, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
		August Recess		
September 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 20, 2011	TBD	Work Session	Council Chambers	Live
September 27, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	TBD	Work Session	Council Chambers	Live
October 25, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live